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2
3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
6

7 In re)
8) Case No. 07-22121-A-7
9 MARIA GARCIA,)
10)
11 Debtor.)
12)
13 MARIA GARCIA,) Adv. No. 07-2116
14)
15 Plaintiff,) Docket Control No. JAR-3
16 vs.)
17 DEPT. OF MOTOR VEHICLES, et al.,) Date: November 13, 2007
18) Time: 9:00 a.m.
19 Defendants.)
20)

21 On November 13, 2007, at 9:00 a.m., the court considered the
22 motion for summary judgment by two defendants, the Department of
23 Motor Vehicles and the Board of Equalization. The complaint by
24 the debtor sought damages for, among other things, violation of
25 the automatic stay. The court's ruling is appended to the
minutes of the hearing. Because that ruling constitutes a
"reasoned explanation" of the court's decision, it is also posted
on the court's Internet site, www.caeb.uscourts.gov, in a text-
searchable format as required by the E-Government Act of 2002.
The official record, however, remains the ruling appended to the
minutes of the hearing.

26 **FINAL RULING**

27 The motion will be granted.

28 The defendants, the Department of Motor Vehicles and the

1 State Board of Equalization, seek summary judgment in their favor
2 on the 11 U.S.C. § 362(k) claim by the plaintiff Maria Garcia,
3 the debtor in the underlying bankruptcy case. Her claim is based
4 on the defendants' alleged violation of the automatic stay due to
5 their post-petition refusal to reinstate the plaintiff's seller's
6 permit.

7 The plaintiff has filed a response, accepting the facts
8 stated by the motion, but now contending that the DMV violated
9 the automatic stay by its "willful withholding of the basis for
10 not reinstating the dealer's license." The plaintiff claims that
11 a genuine issue of material fact exists as to whether the DMV
12 willfully withheld the basis for not reinstating the dealer's
13 license.

14 11 U.S.C. § 362(k)(1) provides that: "an individual injured
15 by any willful violation of a stay provided by this section shall
16 recover actual damages, including costs and attorneys' fees, and,
17 in appropriate circumstances, may recover punitive damages."

18 Preliminarily, the court notes some errors and
19 inconsistencies in the plaintiff's complaint. First, even though
20 the complaint cites 11 U.S.C. § 362(h), the provision allowing
21 for the recovery of damages for violations of the automatic stay
22 is 11 U.S.C. § 362(k).

23 Second, while the plaintiff states that she filed for
24 bankruptcy on March 20, 2007, the case docket shows that she
25 filed her bankruptcy petition on March 27, 2007. Complaint, ¶ 5.

26 Third, the complaint alleges that "[o]n or about 10:00 a.m.
27 of March 20, 2007, the plaintiff did personally speak to
28 representatives of the SBE and DMV, whereby the debtor's attorney

1 informed the entities both orally and in writing of the filing of
2 the bankruptcy petition under chapter 13 and notice of the
3 automatic stay." Complaint, ¶ 6. But, the plaintiff could not
4 have informed the defendants of the bankruptcy filing on March
5 20, because she did not file for bankruptcy until March 27.

6 Fourth, the allegations in paragraph six of the complaint
7 are vague about who informed the defendants regarding the
8 bankruptcy filing. At first, the plaintiff states that she
9 personally "[spoke]" with the defendants, but then the complaint
10 goes on to say that it was the plaintiff's attorney who actually
11 informed the defendants of the bankruptcy filing. Complaint, ¶
12 6.

13 These errors inconsistencies cast doubt on when and how the
14 defendants were informed of the plaintiff's bankruptcy filing.

15 The court will now turn to the merits of the motion.

16 Summary judgement is appropriate when there exists "no
17 genuine issue as to any material fact and the moving party is
18 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).
19 The Supreme Court discussed the standards for summary judgment in
20 a trilogy of cases, Celotex Corporation v. Catrett, 477 U.S. 317,
21 327 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986),
22 and Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475
23 U.S. 574 (1986). In a motion for summary judgment, the moving
24 party bears the initial burden of persuasion in demonstrating
25 that no genuine issues of material fact exist. See Anderson at
26 255. A genuine issue of material fact exists when the trier of
27 fact could reasonably find for the non-moving party. Id. at 248.
28 The court may consider pleadings, depositions, answers to

1 interrogatories and any affidavits. Celotex at 323.

2 The complaint maintains that the plaintiff's bankruptcy
3 counsel spoke with the DMV's counsel, Eric Ross, at approximately
4 11:00 a.m. on April 23, 2007, about the DMV's refusal to
5 reinstate the plaintiff's seller's permit. Complaint, ¶ 7. Mr.
6 Ross assured the plaintiff that "contact would be made," "on or
7 before April 24, 2007," about the DMV's refusal to reactivate the
8 permit. Complaint, ¶ 8. The plaintiff received no contact from
9 the DMV and her counsel contacted the DMV counsel again on April
10 27, 2007. Complaint, ¶ 9. As of April 27, the DMV allegedly had
11 not yet explained why it had not reactivated the plaintiff's
12 permit, despite a reactivation request by the SBE and the
13 plaintiff's notice of bankruptcy filing. Complaint, ¶ 10. The
14 plaintiff contends that the DMV's refusal to reactivate the
15 permit was a collection effort on behalf of the SBE. Complaint,
16 ¶ 14.

17 On the other hand, the defendants claim that the SBE
18 reinstated the seller's permit two days after the plaintiff filed
19 for bankruptcy. They further maintain that the DMV does not and
20 did not engage in collection efforts on behalf of the SBE.

21 According to the defendants, the SBE revoked the plaintiff's
22 seller's permit on February 13, 2007 and notified her of the
23 revocation on March 6. On February 14, the DMV received a notice
24 of cancellation of the plaintiff's dealer's license bond. As a
25 result, on February 17, the DMV notified the plaintiff of the
26 bond cancellation and issued a final notice, requiring her to
27 reinstate the bond in order to avoid the cancellation of her DMV
28 license and permits. The plaintiff failed to obtain the

1 replacement bond by the March 16 cancellation date. On March 27,
2 the SBE faxed a letter to the DMV, requesting it to cancel the
3 plaintiff's dealer's license because she was operating her
4 business without a seller's permit. But, on March 29, the SBE
5 reinstated the seller's permit, due to the bankruptcy filing.
6 This was confirmed with a letter to the plaintiff's counsel,
7 dated April 9, 2007. The above facts are established by evidence
8 submitted in support of the motion.

9 The plaintiff has filed a response, accepting the facts
10 stated by the defendants in their motion, but now contending that
11 a genuine issue of material fact exists as to whether the DMV
12 willfully withheld the basis for not reinstating the dealer's
13 license.

14 First, the plaintiff's complaint makes no reference to her
15 ever inquiring from the defendants about her dealer's license.
16 The complaint refers only to inquiries about a seller's permit.
17 And, the plaintiff has not moved to amend her complaint in
18 accordance with the present allegations in her response to the
19 motion. Thus, the only facts before the court, for purposes of
20 this motion, are the facts in the plaintiff's complaint. And,
21 those facts make no reference to inquiries about the dealer's
22 license.

23 Second, the court finds no violation of the automatic stay
24 based on the evidence supplied by the defendants. The SBE
25 reinstated the plaintiff's seller's permit within two days of the
26 plaintiff's filing for bankruptcy. And, even if the plaintiff
27 amends her complaint to claim that the DMV violated the stay by
28 "withholding ... the basis for not reinstating the dealer's

1 license," the evidence clearly shows that the DMV did not
2 withhold the reasons for the cancellation of the dealer's
3 license. The license was cancelled pre-petition, on March 16,
4 because the plaintiff failed to obtain a new surety bond. The
5 final notice notifying the plaintiff that her dealer's license
6 would be cancelled on March 16 was sent to her on or about
7 February 17 and she does not dispute receiving it. Therefore,
8 even before filing for bankruptcy on March 27, the plaintiff was
9 aware, or at the least should have been aware, of the reason DMV
10 cancelled her dealer's license. And, the final notice to the
11 plaintiff shows that the DMV did not withhold the reasons for the
12 cancellation of the dealer's permit. Accordingly, the court
13 finds that the DMV did not withhold information from the
14 plaintiff about the cancellation of the dealer's license and that
15 the DMV did not violate the automatic stay. This is well
16 established by the uncontradicted record.

17 Lastly, even if the DMV withheld "the basis for not
18 reinstating the dealer's license," the plaintiff has not shown
19 how this amounts to a violation of the automatic stay under 11
20 U.S.C. § 362(a). Neither the plaintiff's response, nor the
21 complaint explain how the withholding of information by the DMV
22 constitutes a violation of the automatic stay.

23 Based on the foregoing, the court concludes that there are
24 no genuine issues of material fact. The plaintiff has failed to
25 establish that the defendants violated the automatic stay. The
26 defendants are entitled to a judgment as a matter of law. The
27 motion will be granted.